RESPONSE AND REMARKS

The telephone interview of February 20, 2007 with Examiner Patel is gratefully acknowledged with appreciation. The interview was conducted via a telephone conference between inventor Brent C. Abrahm, Examiner Patel and attorney of record Marilyn R. Khorsandi. The Examiner issued an Interview Summary. As required by the rules, it is respectfully submitted that the substance of the interview is included in the substance of the amendments to the Claims and in the substance of the below-given Response and Remarks.

It is noted that, in order to facilitate the February 20, 2007 telephone interview, the Examiner requested, and Applicant(s) provided, an outline of topics for discussion that included proposed Claim amendments to exemplary Claims. The telephone interview was conducted with reference to the outline of topics, the Office Action, the references cited in the Office Action, the Declaration Under 37 C.F.R. Section 132 by Brent C. Abrahm Filed in Support of Amendment and Response to Office Action Dated July 5, 2006 and/or the Exhibits to that Declaration, and to the specification and claims of the present application.

In the Interview, although agreement was not reached with respect to specific Claim language, the Examiner suggested some deficiencies in Claim 16 and suggested considerations for remedying those deficiencies; the Examiner suggested writing Claims 16 and 17 in independent form, with further amendments to remedy the suggested deficiencies, for possible allowability.

Further to the suggestion by the Examiner, independent Claims 1-2 have been cancelled and new independent Claims 133 and 134 have been added. No new Claim fees are due.

New Claim 133 incorporates the limitations of previous dependent Claim 16, and independent Claim 3 on which previous Claim 16 depended, and further includes limitations to remedy the deficiencies suggested by the Examiner in previous Claim 16.

New Claim 134 incorporates the limitations of previous dependent Claim 17, and independent Claim 3 on which previous Claim 17 depended, and further

includes limitations to remedy the deficiencies suggested by the Examiner in previous Claim 17.

Yet further, Independent Claim 3 has been amended to include limitations further to the above-mentioned deficiencies suggested by the Examiner.

RESTRICTION REQUIREMENT

In the Office Action, Claims 47 and 91, and the Claims dependent on them, were withdrawn by the Examiner on the grounds that "... amended independent claims 47 and 91 are directed [to] process and apparatus, which comprise features distinct from the originally elected claim 3 as outlined above [in the Office Action]." *Office Action*, Topic No. 4, p. 3.

In response to the Examiner's withdrawing process and program product Claims 47 and 91, and the Claims dependent on them, without waiving rights to argue to the contrary, Applicant(s) respectfully withdraw Claims 47 and 91, and the Claims dependent on them, without prejudice to later requesting reinstatement of those Claims with amendments that result in those Claims being directed to process and program product claim versions of Claims that may be allowed, and/or without prejudice to Applicants' filing, during the pendency of the present Application, one or more continuation and/or divisional applications directed to the withdrawn Claims, in accordance with 35 U.S.C. §§ 120 and 121 and 37 C.F.R. § 1.142.

REJECTIONS UNDER SECTION 101

In the Office Action, Claims 3, 11-12, 16-17, and 20, were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

The rejections under Section 101 have been carefully considered. Without waiving rights to argue to the contrary of the rejections under Section 101, Claim 3 has been amended to more distinctly claim the claimed invention; it is respectfully submitted that amended Claim 3 is directed to statutory subject

matter, and that, therefore, Claims 11-12, 16-17 and 20 are also directed to statutory subject matter.

REJECTIONS UNDER SECTION 103(a)

In the Office Action, Claims 3, 11-12, 16-17, and 20, were rejected under 35 U.S.C. §103(a) as being unpatentable over Morris,et al. ("Deferred Exchange Regulations Issued"; "*Morris*"), or alternatively, Fellows, et al. ("Deferred Like-Kind Exchanges: An Analysis of the Proposed Regulations Under Section 1031(a)(3)"; "*Fellows*"), and further in view of Reich (US Publication No. 2002/0059107 A1; "*Reich*"). *See, e.g., Office Action*, Topic No. 7, p. 6.

REMARKS REGARDING SECTION 103(a) REJECTIONS

The rejections under Section 103(a) have been carefully considered. Without waiving rights to argue to the contrary of the rejections under Section 103(a), Claims 3, 12, and 16-17 have been amended to more distinctly claim the claimed invention. It is respectfully asserted, for the reasons given below, that Claims 3, 11-12, 16-17, and 20, as amended, are novel and non-obvious in view of the references of record. Yet further, for similar reasons, it is respectfully asserted that new Claims 133 and 134 are novel and non-obvious in view of the references of record.

It is respectfully asserted that none of the references of record disclose, anticipate, teach or suggest all of the limitations of amended independent Claim 3. For example, amended independent Claim 3 recites the limitation of:

> ...C) for a result of B) that indicates that the proposed exchange would meet safe-harbor provisions for tax-deferred treatment, automatically transact at least a portion of the proposed exchange of the at least one property to be relinquished for the at least one replacement property ....

Specifically, it is respectfully asserted that the combination of limitations recited by amended independent Claim 3 to "...substantially simultaneously test the plurality of parameters that characterize the proposed exchange against a set

of rules by which like-kind exchange transactions meet safe-harbor provisions for tax-deferred treatment ..." with the above-recited limitation to "... automatically transact at least a portion of the proposed exchange ..." is not disclosed, anticipated, taught or suggested by any combination of the cited references.

Further, amended Claim 3 recites:

> ... wherein automatically transacting at least a portion of the proposed exchange comprises automatically sending a notification of an assignment by the taxpayer of rights ...

Yet further, amended Claim 3 recites:

> ... wherein automatically sending the notification of the assignment by the taxpayer of rights comprises sending to a party to the exchange the notification of the assignment by the taxpayer of rights, wherein the party to the exchange is selected from a group comprising: the at least one relinquishment property receiver, and the at least one replacement property provider ...

It is respectfully asserted, for the reasons given further below, that the IRS Private Letter Ruling No. 200236026 (Reference CC:ITA:4 -- PLR-118622-01) (dated June 3, 2002; the "*IRS Ruling*"), Exhibit A to the Declaration Under 37 C.F.R. Section 132 by Brent C. Abrahm Filed in Support of Amendment and Response to Office Action Dated July 5, 2006 ("*Abrahm Decl'n.*"; the entire contents of which, including the contents of the Exhibits thereto, are incorporated by reference herein as if fully stated here) provides evidence that transacting an exchange comprises, among other things, providing notification to the parties to an exchange of an assignment of rights. Further, it is respectfully asserted, for the reasons given further below, that the combination of limitations recited in amended independent Claim 3 are novel and non-obvious in view of the references of record.

Notably, the *IRS Ruling* is dated June 3, 2002 -- after the May 25, 2001 filing date of the present application and the May 25, 2000 date of the earliest provisional application to which the present application claims priority.

According to the facts of an exchange analyzed by the *IRS Ruling*, "[Company] A, a wholly owned subsidiary of B, ... and [Qualified Intermediary] QI entered into an agreement ... pursuant to which QI agreed to serve as the qualified intermediary for certain transactions, including those addressed in this letter ruling." *IRS Ruling*, Exh. A to *Abrahm Decl'n*, pgs. 1-2.

According to the facts of the exchange analyzed by the *IRS Ruling*, "[Qualified Intermediary] QI has developed a World Wide Web site that facilitates online like-kind exchanges by using the Internet and electronic or wire funds transfers to accomplish these exchanges." *IRS Ruling*, Exh. A to *Abrahm Decl'n*, p. 2.

According to the facts of the exchange analyzed by the *IRS Ruling*, according to the agreement between Company A and qualified intermediary QI, Company A "... assigns to QI A's rights to sell relinquished property under sale agreements and rights to purchase replacement property under purchase agreements." *IRS Ruling*, Exh. A to *Abrahm Decl'n*, p. 2. "[Company] A completes an online questionnaire to enable [Qualified Intermediary] QI to send the wiring instructions and notice of assignment of rights to each purchaser." *IRS Ruling*, Exh. A to *Abrahm Decl'n*, p. 3.

According to the *IRS Ruling*, one way for an exchange of properties to qualify for tax-deferred treatment under Section 1031 of the United States Internal Revenue Code, and under United States Treasury Regulation Section 1.1031 is if the taxpayer enters into an agreement with a qualified intermediary, assigning rights to the intermediary, and limiting rights of the taxpayer, to receive, pledge, borrow or otherwise obtain benefits of money or other property held by the qualified intermediary for exchange, and if the parties to an exchange "... *are notified in writing of the assignment on or before the date of the relevant transfer of property*." *IRS Ruling*, Exh. A to *Abrahm Decl'n*, pgs 5-6 (emphasis added).

According to the facts of the exchange analyzed by the *IRS Ruling*, "... the purchaser received notice of the assignment before the time that the relinquished property was transferred to the purchaser." In view of the above-outlined facts,

the *IRS Ruling* held that, "... QI will be treated as acquiring and transferring the relinquished property pursuant to §§1.1031(k) – 1(g)(4)(iv)(B) and (v)." *IRS Ruling*, Exh. A to *Abrahm Decl'n*, p. 6.

Further, according to the facts of the exchange analyzed by the *IRS Ruling*, "The sellers in the transactions ... received notice of the assignment before the time that the replacement property is transferred to [Company] A." In view of the above-outlined facts, the *IRS Ruling* held that, "... QI will be treated as acquiring and transferring the replacement property pursuant to §§1.1031(k) – 1(g)(4)(iv)(C) and (v)." *IRS Ruling*, Exh. A to *Abrahm Decl'n*, p. 7.

The *IRS Ruling* acknowledged that the Electronic Signatures Act (Pub. L. No. 106-229, 114 Stat. 464 (2000); the "Act") "... provides that a signature, contract or other record relating to a transaction may not be denied legal effect, validity, or enforcement solely because it is in electronic form." *IRS Ruling*, p. 2, footnote 1 (citing Section 101(a) of the Act). However, the *IRS Ruling* observed that "... the Act does not limit or supersede any requirement by a Federal regulatory agency that records be filed with such agency in accordance with specified standards or formats." *IRS Ruling*, p. 2, footnote 1 (citing Section 104(a) of the Act).

As observed by the *RIA Alert* (Exhibit B to the *Abrahm Decl'n*), "[b]oth the buyer of the relinquished property and the seller of the replacement property are notified of the assignment of ... rights regarding the transaction via e-mails." *RIA Alert*, Exh. B to the *Abrahm Decl'n*, p.2.

Even though the notifications of assignment were provided electronically by QI, the *IRS Ruling* held that "QI ... will be treated as a qualified intermediary ... and will be treated as acquiring and transferring the relinquished property and the replacement property for purposes of §1031." *IRS Ruling*, Exh. A to *Abrahm Decl'n*, p. 7.

Notably, the *RIA Alert*, Exhibit B to the *Abrahm Decl'n*, heralded the *IRS Ruling* as "... approv[ing] deferred multi-property exchanges using a 'virtual' qualified intermediary, namely one that operates electronically through an

Internet site." *RIA Alert*, Exh. B to the *Abrahm Decl'n*, p. 1. Yet further, in analyzing the *IRS Ruling*, the *RIA Alert* observed that "[t]he favorable *new* ruling makes it easier for sellers to legitimately avoid paying tax on the sale of a non-inventory asset if they intend to reinvest the sales proceeds in like-kind property." *RIA Alert*, Exh. B to the *Abrahm Decl'n*, p. 1 (emphasis added).

It is respectfully asserted that, as described above, the considerations before, and holdings by, the Internal Revenue Service in providing the *IRS Ruling* provide evidence that transacting an exchange comprises, among other things, providing notification to the parties to the exchange of an assignment of rights.

Further, it is respectfully asserted that, as described above, the considerations before, and holdings by, the Internal Revenue Service in providing the *IRS Ruling*, and the *RIA Alert* analysis of, and observations by the *RIA Alert* regarding, the *IRS Ruling* and the subject matter of the *IRS Ruling*, provide evidence that an embodiment of limitations recited in amended independent Claim 3 were considered novel at the time the Internal Revenue Service rendered the IRS Ruling.

Yet further, it is respectfully asserted that, as described above, the considerations before, and holdings by, the Internal Revenue Service in providing the *IRS Ruling*, and the *RIA Alert* analysis of, and observations by the *RIA Alert* regarding, the *IRS Ruling* and the subject matter of the *IRS Ruling*, provide evidence that various embodiments of the limitations recited in amended independent Claim 3 would be useful for, such as, for example, "...mak[ing] it easier for sellers to legitimately avoid paying tax on the sale of a non-inventory asset if they intend to reinvest the sales proceeds in like-kind property." *See RIA Alert*, Exh. B to the *Abrahm Decl'n*, p. 1.

Therefore, in view of the considerations before, and holdings by, the Internal Revenue Service in providing the *IRS Ruling*, and the *RIA Alert* analysis of, and observations by the *RIA Alert* regarding, the *IRS Ruling* and the subject matter of the *IRS Ruling*, it is respectfully asserted that the combination of

limitations recited in amended independent Claim 3 is novel and non-obvious in view of the references of record.

Further, for reasons similar to those given above for amended independent Claim 3, it is respectfully asserted that new independent Claims 133 and 134 are novel and non-obvious in view of the references of record.

Yet further, because it is respectfully asserted that Claim 3 is novel and non-obvious in view of the references of record, it is further respectfully asserted that the Claims that are dependent on Claim 3 are novel and non-obvious over the references of record, namely Claims 11, 12, 16, 17 and 20.

CONCLUSION

In view of the foregoing amendments, and for the foregoing reasons, it is respectfully asserted that the invention disclosed and claimed in the present application, as amended, is not fairly taught by any of the references of record, taken either alone or in combination, and that the application is in condition for allowance. Accordingly, reconsideration and allowance of the application as amended herewith is respectfully requested.

Respectfully submitted,

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